

RECENT WELFARE PLAN DEVELOPMENTS FOR GOVERNMENTAL EMPLOYERS

Ice Miller LLP

ACT	SUMMARY/PURPOSE	PLANS AFFECTED	EFFECTIVE DATE
Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act)	A cafeteria plan or health flexible spending account (FSA) <u>may</u> allow for qualified reservist distributions (QRDs). A QRD is a distribution to a health FSA participant of all or a portion of his/her FSA balance if (i) the reservist is ordered or called to active duty for at least 180 days (or an indefinite period) and (ii) the QRD is made during the period beginning with the call to active duty and ending on the last day of the FSA coverage period that includes the date of such order or active call to duty.	Plans maintained under Internal Revenue Code (Code) Section 125 (cafeteria plans) with health care flexible spending accounts.	June 17, 2008
Medicare Secondary Payer Rules (Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007)	To improve accuracy of billing when Medicare is secondary to a group health plan, these rules require insurers, third party administrators, or, in the case of a self-funded, self-administered plan, a plan administrator to report information to the Centers for Medicare & Medicaid Services (CMS) regarding Medicare beneficiaries who have group health coverage. The party responsible for reporting this information is referred to by CMS as the "responsible reporting entity," or "RRE."	All group health plans except those sponsored by employers who meet the small employer exception (generally less than 20 full or part-time employees and not a multi-employer or multiple employer).	The new rules were implemented beginning January 1, 2009. RREs were to register with CMS online during April 2009. Quarterly submissions to CMS began after registration, as assigned based on group number.
Fostering Connections to Success & Increasing Adoptions Act of 2008	This law adds three requirements to the definition of "dependent" for tax purposes: (1) requires that a Qualifying Child be younger than the individual claiming the child as a dependent; (2) states that a Qualifying Child may not file a joint return with his/her spouse; and (3) revises the "tie-breaking" rules to provide that if a parent could claim the Qualifying Child but neither parent does so, then another person with a higher adjusted gross income than either parent may do so.	<u>For tax purposes:</u> all group health plans providing coverage to children and other dependents of employees. <u>For qualification purposes:</u> cafeteria plans which include specific definition of dependent or incorporate health plan definition rather than incorporating Code Section 152 by reference.	January 1, 2009

ACT	SUMMARY/PURPOSE	PLANS AFFECTED	EFFECTIVE DATE
Family and Medical Leave Act Amendments (provided in National Defense Authorization Act)	This law adds two new leave entitlements for families of members of the armed forces, one for qualifying exigencies arising out of a covered military member's active duty status or notification of activation (12 weeks), and one for caring for a covered service member recovering from a serious injury or illness incurred in the line of duty (26 weeks).	Plans that reference FMLA leaves such as group health plans. Amendment is necessary if the plan <u>lists</u> FMLA leave entitlements (rather than incorporating the FMLA provisions by reference).	January 16, 2009
COBRA Subsidy (provided in the American Recovery and Reinvestment Act of 2009)	Provides a 15-month 65 percent COBRA subsidy to employees involuntarily terminated between September 1, 2008 and February 28, 2010; employers recoup the amount of the subsidy through a credit against certain employment taxes. Further extension of the subsidy (already extended once) is being considered by Congress. Employers subject to COBRA are required to provide various notices to participants regarding the subsidy.	All group health plans that are subject to federal COBRA continuation coverage requirements (except medical FSAs) or to similar requirements under state law must provide the subsidy.	Subsidy is effective for periods of health coverage beginning on or after February 17, 2009.
Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (specifically Section 311 of CHIPRA, regarding the special enrollment period and premium assistance)	Requires group health plans to offer a 60-day special enrollment period and to provide certain notices to employees in order to provide opportunities for employees and their dependents to enroll in coverage under the plan if they lose coverage under Medicaid or CHIP, or to get coverage under the plan if they become eligible for "premium assistance" (a state subsidy paid to employees or directly to employers to subsidize premium payments for eligible individuals).	Group health plans and cafeteria plans. Self-funded, non-federal governmental plans may opt-out of these special enrollment requirements.	<u>For special enrollment period:</u> must be offered by April 1, 2009. <u>For notices of premium assistance:</u> must provide by the later of: (a) the first day of the first plan year that begins after February 4, 2010 (January 1, 2011, for calendar year plans); or (b) May 1, 2010.
Genetic Information Nondiscrimination Act of 2008 (GINA)	Prohibits employees' health premiums from being raised because of their genetic information by prohibiting employers from requiring or requesting genetic information from employees, or from collecting genetic information for underwriting purposes. GINA defines "genetic information" to include family medical history, which may require changes to health risk assessments that are provided to employees and tied to premium discounts and/or provided prior to or in connection with plan enrollment.	All group health plans (no small plan exception and opt-out is not allowed for self-funded, non-federal governmental plans). Includes retiree medical benefit plans.	Plan years beginning on or after May 21, 2009 (January 1, 2010, for calendar year plans).

ACT	SUMMARY/PURPOSE	PLANS AFFECTED	EFFECTIVE DATE
Mental Health Parity Act Amendment (part of the Emergency Economic Stabilization Act of 2008)	Prohibits affected plans from placing any financial requirements or treatment limitations on mental health or substance use disorder benefits that are more restrictive than the predominant financial requirements or treatment limitations placed on substantially all medical and surgical benefits. These rules will require review and potential changes to a plan's schedule of benefits when mental health or substance use disorder benefits are treated differently than medical/surgical benefits.	Group health plans that provide both medical/surgical benefits and mental health or substance use disorder benefits; there is a small employer exemption and a cost exemption, and self-funded, non-federal governmental plans may opt-out of the requirements.	Plan years beginning after October 3, 2009 (January 1, 2010, for calendar year plans).
Michelle's Law	Protects health insurance for dependent students who take a medically necessary leave of absence for up to one year by requiring the plan to continue to treat the dependent student as maintaining student status during the leave for purposes of eligibility.	All group health plans that provide coverage for dependent students. Self-funded, non-federal governmental plans may opt-out of this requirement.	Plan years beginning on or after October 9, 2009 (January 1, 2010, for calendar year plans).
The Health Information Technology for Economic and Clinical Health Act (HITECH Act) (provided in the American Recovery and Reinvestment Act of 2009)	Focuses on a strategic national plan to promote health information technology and to set national standards for the secure electronic exchange and use of health information. To achieve these goals, the HITECH Act increases the requirements placed on business associates of covered entities, requires notifications to affected individuals for a breach of unsecured protected health information (PHI), refines the definition of "minimum necessary" uses and disclosures of protected health information, and provides for various other restrictions on disclosures.	All group health plans.	<p><u>General effective date:</u> February 17, 2009.</p> <p><u>For Breach Notification Requirements:</u> September 23, 2009.</p> <p><u>For rules regarding accounting of certain PHI disclosures if covered entity uses electronic health records:</u> (i) January 1, 2014, if covered entity has an electronic health record in place by January 1, 2009; (ii) otherwise, the later of January 1, 2011, or the date the covered entity acquires an electronic health record.</p>